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Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the)	
Subscriber Changes Provisions)	
of the Telecommunications Act)	
of 1996)	CC Docket No. 94-129
)	
Policies and Rules Concerning)	
Unauthorized Changes of Consumers')	
Long Distance Carriers)	
_____)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") hereby respectfully submits its comments on the Commission's *Further Notice of Proposed Rule Making*, FCC 97-248 released July 15, 1997 (*Further Notice*) in the above-captioned proceeding.¹

I. SUMMARY AND INTRODUCTION.

Sprint agrees "that unauthorized changes in subscribers' carrier selections, a practice commonly known as 'slamming,' is a significant consumer problem." *Further Notice* at ¶4. Slamming clearly continues to plague the competitive interexchange market and undoubtedly will occur in the local and intraLATA toll

¹Also issued with the *Further Notice* is the Commission's *Memorandum Opinion and Order on Reconsideration* of its previous decision in this docket (*Reconsideration Order*).

markets if competition develops there as well.² What is less than clear, however, is how best to address the problem.

The Commission has already taken several serious steps -- primarily through regulation of the primary interexchange carrier (now called "primary carrier" or PC) process -- designed to minimize slamming.³ And, these steps may well be helping to curtail the incidence of unauthorized customer changes. Yet, the Commission's regulatory efforts have not been totally effective at bringing the problem under control. The number of slamming complaints filed with the Commission continues to grow, *Further Notice* at ¶6, and the United States Congress has instructed the Commission to address the problem by removing the financial

²Sprint's subsidiary responsible for publishing the phone books and yellow page directories for Sprint's local telephone companies -- Sprint Publishing and Advertising ("SPA") -- has received a number of calls from advertisers in the Orlando Yellow Pages claiming to have been slammed by one the competitive local exchange carriers ("CLECs") that have recently entered the market. SPA received such calls because it bills its advertising customers who SPA learns have switched to another local carrier directly instead of having Sprint's local company include such charges on its phone bill to the customer. During the period January 1 through August 2, 1997, 86 out of a total of approximately 600 advertisers (or about 14 percent) which SPA had started to bill directly called SPA's customer care center to complain that they had been slammed.

³See *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992) (Verification Order), recon. denied, 8 FCC Rcd 3215 (1993) (Verification Reconsideration Order) (adopting rules requiring interexchange carriers ("IXCs") to verify all changes generated by outbound telemarketing before submitting such change orders to local exchange carriers); and *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560, 9560-9561 ¶1 (1995) (LOA Order) (prescribing the "general form and content" of Letters of Agency ("LOAs") and other policies to "prohibit certain deceptive or confusing marketing practices" by IXCs).

incentive to engage in slamming.⁴

A major reason why "unauthorized changes in subscribers' carrier selections" continue to be "a significant consumer problem" may be the fact that so little is known about the root causes of slamming. Anecdotal evidence suggests a number of sources for slamming by carriers, ranging -- perhaps along a continuum -- from innocent and inadvertent mistakes by IXC's, incumbent local exchange carriers ("ILECs") and CLECs in the order entry process to outright fraud practiced by "unscrupulous carriers or their marketing agents [that] use deceptive practices to convert large numbers of consumers to their service to reap economic benefits." *Further Notice* at ¶6. Subscribers themselves may be contributing to the problem by alleging they have been slammed even though they or someone in their households agreed to change IXC's. The real reason for the alleged slam may range, again along a continuum, from an innocent case of "buyer's remorse" to an attempt by some subscribers to fraudulently obtain a refund of any carrier change fees already paid to the ILEC, avoid new change fees incurred in switching to another carrier and perhaps even to obtain free (or reduced rate service) from the allegedly unauthorized carrier.

⁴Under Section 258 of the Communications Act which was added by the Telecommunications Act of 1996, the Commission is to adopt rules holding carriers submitting or executing change orders in violation of the Commission's verification procedures liable to the properly authorized carrier for forgone revenues. In the recently enacted balanced budget bill, the Commission has been given the authority to impose fines on carriers that violate the FCC's verification rules in amounts up to \$200,000 per violation.

The *Further Notice* does not discuss, in detail, the root causes of slamming. Nor does the *Further Notice* present any analysis based on empirical data as to the costs and benefits of any of the new regulations being proposed here. Absent such cost/benefit analysis, the Commission risks adopting "solutions" to the slamming problem that will be ineffective in reducing the incidence of slamming but will nonetheless increase the costs of those carriers that comply with such rules. Moreover, additional regulation making it more difficult for subscribers to switch carriers or making it more expensive for carriers to market to subscribers will carry additional costs in terms of its negative impact on competition.

The Commission, of course, should issue rules adopting the specific requirements of Section 258 as soon as possible. Congress has determined that these requirements are in the public interest and the Commission need not develop further record evidence to justify their implementation. But, the Commission should, at this time, refrain from adopting any of the proposed rules set forth in the *Further Notice* that go beyond its Section 258 mandate. Unless the Commission gathers the information necessary to develop a complete understanding as to why a slam occurs -- and only the Commission has the ability to conduct such analysis on an industry-wide basis - there is no way that it will be able to engage in reasoned decision-making. The Commission cannot regulate in a vacuum. It must learn, in the

first instance, the specific problems to be addressed and then it must weigh the likely effectiveness of any regulation in combating such problems against the cost of the regulation and its impact on competition.

Given the fact that slamming may be attributable to a variety of causes, solutions other than the proposals designed to implement Section 258 may be necessary. For example, the proposed Section 258 regulations may not be particularly helpful in reducing slamming caused by carrier mistakes in the order entry process. Certainly, such regulations will provide little additional incentive to most IXC's -- and, in particular, to IXC's with substantial fixed investment -- to minimize their mistakes. These IXC's are already under enormous competitive pressure to generate customer good will, and therefore have every incentive to guard against the submission of erroneous or unverified customer change orders to the ILECs.

On the other hand, the fact that the Regional Bell Operating Companies ("RBOCs"), GTE and Southern New England Telephone ("SNET") may be liable under the proposed rules to both authorized carriers and perhaps their subscribers for order execution failures is unlikely to provide much of an incentive to ensure that such ILECs will act to minimize mistakes that result in slamming. These ILECs have already demonstrated a propensity to exploit the slamming issue for their own competitive purposes. See Comments of Sprint Communications Company L.P. ("Sprint LD")

on MCI's Petition for Rulemaking in CCB/CPD 97-19 (RM-9085) (*Policies and Rules Pertaining to Local Exchange Carrier "Freezes" on Consumer Choices of Primary Local Exchange or Interexchange Carriers*) at 6-9 ("Freeze Comments"). As long as the ILECs retain "gatekeeper" control of the carrier change process, they will be able to attribute many of their errors to unaffiliated IXCs and CLECs, thereby damaging the reputations of such carriers and gaining a competitive advantage in the marketplace for themselves and their IXC subsidiaries. If the Commission is to minimize mistakes in the execution of PC changes and prevent the ILECs from abusing their control of the carrier change order process to the detriment of competition, it needs to adopt a structural remedy: the Commission must remove the ILECs as "gatekeepers" and assign the administration of the carrier change order process to a neutral third party. Sprint details its justification for such remedy in Section II.

The Commission's proposed regulations are also unlikely to have any beneficial impact on slamming caused by the fraudulent practices of unscrupulous carriers. These carriers presumably do not comply with the Commission's current rules designed to curtail slamming and are unlikely to obey any new anti-slaming regulations that the Commission may adopt in the instant proceeding. What is needed to deter the fraud practiced by such carriers and their agents is not more verification or reporting requirements or additional rules of any kind, but rather

criminal prosecution, fines, or even imprisonment of those who deliberately set out to steal from carriers and from customers. Sprint's position here is discussed in Section III.

Finally, Sprint opposes any rule that would relieve customers who claim to have been slammed of the duty to pay any of the charges for the calls made during the time that they were assigned to an allegedly unauthorized carrier. As the Commission itself notes, *Further Notice* at ¶27, such rule would only encourage fraud. Sprint also believes that the stay of the requirement for verification of PC changes resulting from inbound telemarketing should continue, *Further Notice* at fn. 61, until evidence is presented that a slamming problem exists in this regard and, if so, that the benefits of verifying PC changes resulting from inbound telemarketing outweigh the substantial costs of such verification.⁵ Sprint's position is discussed in Section IV.

II. ANY EFFORT TO CONTROL SLAMMING MUST ADDRESS UNAUTHORIZED CHANGES CAUSED BY MISTAKES IN THE ORDER EXECUTION PROCESS.

As stated, Sprint believes that one factor contributing to the slamming problem is mistakes committed by carriers in the

⁵If the Commission decides to lift the stay of the inbound calling provision, it should clarify that the requirement for verification only applies when the consumer who has called the carrier is switching his basic dial service to that carrier from another provider. Thus, verification would not apply to consumers who are subscribing to service for the first time, to consumers who call the carrier to order new or additional services and features from such carrier or to slammed consumers who call their authorized carriers to request that such carriers restore their service.

order entry process. Individual IXCs and the ILECs handle tens of thousands of PC changes in any given month, and it is simply beyond reason to expect that the processing of PC changes will be entirely error-free.

However, there are important distinctions between IXCs and ILECs regarding their incentives to reduce their mistakes. The competitive market already provides the necessary motivation for an IXC that has substantial fixed investment and is in the market for the long term to minimize order processing errors. In contrast, the ILECs are not now subject to the same competitive pressures and their control over the PC process gives them the opportunity to "bury" any mistakes by blaming other carriers. For example, if a customer complains about being assigned to the wrong IXC, the ILEC need only make the change and is free to attribute the mistaken assignment to slamming by the IXC. It is extremely difficult for an IXC to dispute the source of the error with a subscriber that does not want its services. Moreover, by blaming the IXC or charging it with slamming, the ILEC is able to further a strategy of attacking competition generally. Under these circumstances, what is needed to ensure that the order entry process is as free from errors as possible is to relieve the ILECs of the responsibility to execute PC orders and assign it to a neutral third party.

A. Because of Competition, The IXCs Have Every Incentive To Minimize Order Processing Errors That Result In The Unauthorized Conversion Of Subscribers.

As suggested above, no IXC that values its name and reputation will deliberately engage in slamming.⁶ It makes absolutely no sense -- either as a business or economic matter -- for it to do so. Slamming makes it harder for IXCs to compete in the marketplace because it will quickly destroy valued customer goodwill the carrier has generated. Slamming also increases a carrier's customer service costs associated with handling slamming calls and inquiries forwarded to the carrier by both federal and state officials. And, slamming has no lasting revenue effect because slammed customers are eventually returned to their carriers of choice.

Nevertheless, even those IXCs that recognize that slamming is not a rational business or economic strategy have, at one time or another, been accused of converting customers to their services without authorization. Undoubtedly, some of these conversions can be attributed to such factors as buyer's remorse or an allegedly improper decision-maker.⁷ Others are likely to

⁶This obviously excludes the "fly-by-night" carriers that are in the business of making money through slamming.

⁷Sprint LD has conducted a study of the reasons why it was unable to obtain a customer's authorization via third party verification of sales to such customers made in July 1997. While such study does not involve instances of slamming -- without verification Sprint LD was unable to submit the customer's name to the ILEC -- it may be helpful as a predictor of the reasons for disputed PC conversions. In this regard, about 24.7 percent of those who refused to verify the sale had changed their minds about switching to Sprint

involve inadvertent mistakes by the IXC's personnel. And, still others may result from a miscommunication between the IXC's sales agents and prospective customers about a requests for service.⁸

Sprint recognizes that even though an inadvertent IXC mistake may have caused the slam, the customer is, nevertheless, seriously inconvenienced. For this reason, Sprint LD has adopted a "no-fault" policy of not challenging customers' claims that they were switched to Sprint LD without proper authorization even though Sprint LD may have a signed LOA from the complaining customer or has otherwise verified the customer's choice of Sprint LD pursuant to one of the options set forth in §64.1100 of the Commission's Rules. 47 C.F.R §64.1100. Thus, when Sprint LD receives a PC dispute from the customer's ILEC, it instructs such ILEC to return the complaining customer to his previous carrier and reimburses the customer for all carrier change charges incurred.

In any case, Sprint would suggest that other than ensuring that IXCs comply with the Commission's verification rules, little else can be done to reduce the incidence of slamming caused by

(buyer's remorse) and about 4.9 percent involved an unauthorized decision maker.

⁸In Sprint LD's study of its July 1997 sales which could not be verified, miscommunication between the sales agent and customer accounted for about 1.5 percent of unverifiable sales. About 10.6 percent of the unverifiable sales resulted from the fact that Sprint LD personnel had entered an incorrect telephone number for the customer or was given a wrong telephone number by the subscriber. Sprint notes in this regard that even in cases where Sprint LD obtains the customer's signed LOA, the telephone number provided by the customer may be incorrect.

inadvertent IXC mistakes.⁹ The competitive marketplace provides ample incentive for IXCs to minimize their errors.

Given the verification rules governing outbound telemarketing and given the Commission's increased oversight of the slamming problem, additional regulation imposed on "legitimate" IXCs which is intended to mitigate the slamming problem is likely to have only a negligible effect. Sprint discusses its recommendation to deal with those IXCs that deliberately engage in slamming in Section III below.

B. The Fact That The ILECs Are Or Will Soon Be Competitors Of The IXCs In Their Respective Regions Gives Them An Economic Incentive To Exploit Their Status As Gatekeepers To Harm Competition.

IXCs, of course, do not -- and cannot -- perform the switch changes necessary to convert customers to their services. That responsibility has thus far fallen to the ILECs which execute the carrier change orders they receive either from the IXCs or directly from customers who call the ILEC's business office to request a change in IXCs or to select an IXC for the first time. The ILECs, however, do not always properly execute such orders, and their errors contribute to the slamming problem or, at least to customers' perceptions that they have been slammed.

For example, under the ILECs' order entry process, a

⁹As Sprint LD's study noted above (see fn. 7) indicates, third party verification may, in some instances, prevent the IXC from submitting to the ILEC wrong numbers or the names of consumers who may not have understood that they had authorized the IXC to convert their service to such IXC.

customer's selection of his IXC must be recorded in the ILEC's billing or subscription records as well as in the ILEC's switch. If the ILEC fails to change a customer's billing or subscription record to reflect a newly chosen IXC, the customer will be informed upon calling the ILEC's business office that he is the customer of his previous IXC. The customer, therefore, may assume -- or perhaps even be advised by the ILEC -- that he had been slammed by his previous IXC.

If a ILEC fails to modify its switch to reflect the change in IXCs, the customer's traffic will continue to be sent to his previous IXC.¹⁰ The IXC will then send the usage tapes to the ILEC to bill that customer as a casual caller. Upon receiving such bills, the customer may believe that he has been slammed by his previous carrier.¹¹

Even in cases where the ILECs both update their billing records and modify their switches to reflect a customer's new PC selection, mistakes occur. Some ILECs may fail to enter the correct carrier identification code ("CIC") of the IXC selected by a customer who called the ILEC's business office to change carriers. The ILEC will notify the carrier whose CIC was entered and such carrier will establish an account for the customer and

¹⁰The previous carrier would also continue to be listed as the customer's PC in the database accessed by dialing the 700 number.

¹¹Using the Customer Account Record Exchange (CARE) process, Sprint is able to correct order entry mistakes of at least some of the ILECs. During the first six months of the 1997, Sprint was called upon to correct order processing mistakes of certain RBOCs on over 15,000 occasions.

begin to carry the customer's traffic. Some time later, the IXC will receive a notice from the ILEC that the customer claims to have been slammed by such IXC. Yet, because the IXC gained the customer through the ILEC, the IXC would have no record of ever having contacted the customer, let alone of ever having tried to solicit the customer's business. Moreover, the IXC may have little basis for challenging the customer's assertion that he had been improperly assigned to the IXC or the ILEC's assertion that such improper assignment is the fault of the IXC.

Similarly, an ILEC may assign customers sent by the IXC to the CIC of another IXC. As is the case where the ILEC neglects to modify its switch to reflect a change in the customer's chosen carrier, the IXC whose CIC is entered will receive the customer's traffic from the ILEC and because it has no record of such customer it will rely upon the ILEC to bill the customer as a casual caller. Here again, upon receiving such bill, the customer may believe that he had been slammed by the IXC despite the fact that the IXC never contacted the customer or tried to sell such customer service. Further, the ILEC whose negligence in entering the CIC caused the mis-routing of the customer's traffic has no incentive to advise the customer to the contrary. No carrier likes to advertise its mistakes.

Another factor contributing to the slamming problem stems from the ILECs' failure to recognize in their customer record databases that an end user is taking long distance service from a

switchless reseller. As far back as 1993, the Commission stated that it expected the industry to implement the recommendation of the Order and Billing Forum to use a switchless reseller indicator ("SRI") in their customer records to distinguish between a facilities-based carrier and the switchless resellers relying upon its services. *Verification Reconsideration Order*, 8 FCC Rcd at 3218-19, ¶20-25. The Commission's expectations here have not been met. Although all of the major ILECs except SNET and Cincinnati Bell now accept IXC change orders with an SRI showing that customers are taking service from switchless resellers, and not the underlying facilities-based IXC whose CIC is being used for routing, none, as far as Sprint is aware, places the indicator in the end users' records so that it can accurately identify the end users' service provider.¹² Thus, the ILECs will inform a customer that his PC is the underlying facilities-based carrier whose CIC is used, rather than the switchless reseller that initiated the carrier change request. Upon receipt of this information, the customer will naturally assume that something is wrong and conclude incorrectly (but not unreasonably in light of the erroneous information conveyed) that he had been slammed by the underlying carrier.

¹²To add "insult to injury," at least two RBOCs -- Ameritech and SBC Communications ("SBC") -- impose a PC change charge on IXCs submitting switchless resellers' customer lists, even though they do not change the customer's PC records.

Moreover, even where a switchless reseller might be responsible for slamming a customer, the ILECs routinely attribute such unauthorized conversion to the underlying facilities-based carrier whose CIC was used. This, of course, inflates the number of slams allegedly perpetrated by the facilities-based carriers. For example, of the number of PC disputes involving Sprint LD that US West said it received from its customers for the period January 1997 through June 1997, nearly 72 percent actually were attributable to certain of Sprint's switchless reseller customers.¹³

The problem of ILEC order processing errors will substantially worsen as the ILECs increasingly become direct competitors of the IXCs. Under such circumstances, it is difficult to expect that the ILECs will devote sufficient resources to minimize their mistakes or administer the order entry process in a competitively neutral fashion. Rather, the ILECs' control of this process enables them to hide their own errors by attributing all mis-assignments to slamming by the IXCs. The ILECs have an incentive to make such attribution since by harming the reputations of the IXCs in this fashion they are able to forestall local and intraLATA toll competition while at

¹³The fact that ILECs continue to show the facilities-based carrier instead of the switchless reseller as the end user's PC makes it relatively easy for a switchless reseller to slam the customers of its own underlying facilities-based carrier.

the same time gaining a competitive advantage for their own IXC affiliates.

It is simply untenable to believe that ILECs can be entrusted with the responsibility to administer governance functions in a fair and impartial manner once they enter or expect to soon enter the interexchange market and once they begin to face competition in the local and intraLATA toll markets. It would seem elementary that a competitor cannot act as a neutral party. See *e.g.*, *U.S. v. AT&T*, 552 F.Supp. 131 (1982); *Provision of Access for 800 Service*, 8 FCC Rcd 1844, 1845, ¶10 (1993). Instead, competitors will seek to exploit whatever advantages they possess in order to enhance their position in the marketplace. See *Further Notice* at ¶15 (a ILEC is likely to abuse its position as gatekeeper to advance its "objectives as a marketplace competitor").

There is already substantial evidence that at least some of the ILECs are abusing their gatekeeper responsibilities to erect barriers to entry into their formerly protected local and "1+" intraLATA markets. As documented in the Sprint LD's Freeze Comments at 6-7, Ameritech, on the eve of implementation of "1+" intraLATA dialing parity, began a campaign throughout its region that sought to capitalize on the slamming problem in the interLATA market to induce its customers to freeze their entire accounts. Customers who responded to Ameritech's inducement not only froze their selection of IXCs but also froze Ameritech as

their provider of "1+" intraLATA and local service. SNET, Nynex, GTE and SBC also have been and are continuing to exploit the alleged slamming problem and their control over the PC freeze process to make it more difficult for competitors to obtain customers in their respective territories. *Id.* at 8-9.¹⁴

There is also evidence that certain ILECs are using the slamming issue to disparage the reputations of IXC's in the interexchange market. They are seeking to portray the IXC's collectively as overaggressive hustlers and to position themselves as the only carriers that can be relied upon to take action to eliminate unauthorized conversions.¹⁵ US West has issued a press release in which it announced that it will ask the Commission's permission to impose fines on carriers that generate a certain number of slamming complaints to its customer service centers. Yet, US West has not implemented recommendations to improve its record-keeping practices in a way that would enable it to determine the carrier that was actually responsible for a particular slamming incident.

¹⁴MCI's Petition will be considered in this proceeding and the Commission has incorporated all pleadings into the record here. *Further Notice* at ¶21.

¹⁵This strategy is also manifested in the national advertising campaign, launched under the auspices of the United States Telephone Association ("USTA") but presumably financed primarily by the RBOCs and GTE, that seeks to denigrate any and all entrants into the local exchange market as unworthy of consumer trust and that the incumbent carrier is the only one that can be relied upon to provide reliable local service. See *In the Matter of Petition for Investigation into Certain Anticompetitive Conduct Facilitated by USTA, Petition for Investigation and Appropriate Relief* filed by Sprint on September 10, 1997.

As noted above, for the period January 1997 through June 1997, nearly 72 percent of the slamming complaints from its subscribers in which US West identified Sprint LD as the "slamming" perpetrator, the slamming incident was actually attributable to certain of Sprint's switchless resellers.

US West's press release also announced that US West would seek authority from the Commission to impose stiffer verification rules on IXCs providing service in its region. Presumably, US West is fully aware that making it more difficult to verify PC changes will impede the ability of those legitimate carriers that present the greatest risk to US West's position in the marketplace from acquiring new customers, while allowing unscrupulous carriers that are likely to evade any verification requirements to continue to fraudulently convert customers to their services. Of equal importance, vesting an RBOC or any ILEC with the discretion to decide whether to impose fines or stricter verification requirements on their actual and potential competitors is obviously inimical to competition. A competitor cannot be given enforcement authority to discipline its rivals in the marketplace.

The actions of Ameritech, Nynex, SBC, US West, GTE and SNET provide clear evidence, as if more were needed, that the goal of the 1996 Telecommunications Act to enable competition in the local and "1+" intraLATA markets and to enhance competition in the interexchange market simply will not be realized as long as

ILECs retain control of the PC change process. As was true for number portability databases, *Telephone Number Portability* (CC Docket No. 95-116), 11 FCC Rcd 8352, 8400 ¶92 (1996), it is necessary for competition to assign responsibility for administering the carrier change process to a neutral third party. Neutral third party administration will deprive, or at least reduce, the ILECs of the ability to increase their rivals' costs by imposing fines for alleged slamming activities; by delaying the execution of orders from carriers on grounds that such carriers have been accused of slamming;¹⁶ by disparaging the reputations of their competitors or potential competitors; by mis-attributing their own mistakes in the order entry process to competitors; and by otherwise foreclosing the ILECs from rigging the PC process to their own advantage.¹⁷ It will also make it harder for an ILEC to exploit the freeze process by making it easier for customers to freeze or unfreeze their accounts when

¹⁶Sprint recognizes that a third party administrator may need to exercise some discretion in processing carrier change orders received from carriers. It may, for example, want to check to ensure that the carrier with a history of slamming and lax verification procedures has submitted properly verified PC change orders. However, vesting a neutral party with such discretion does not present the same risk of anti-competitive behavior that would arise if the ILECs were to perform the same function. Presumably, the neutral third party administrator would not vary its exercise of such discretion depending on the identity of the carrier. Rather, it would apply the same standard to all carriers.

¹⁷Presumably, a third party administrator will have the economic incentive produced by the competitive bidding selection process to ensure that the systems are developed to minimize mistakes and to make the reconciliation process as efficient as possible. By doing so, the neutral third party will help reduce the incidence of PC-change disputes, *Further Notice* at ¶35, or at the very least, enable the carriers to resolve such disputes more efficiently.

the change is in the ILEC's favor, but more difficult to freeze or unfreeze accounts where the change is in the favor of the ILEC's competitor. In short, neutral third party administration will help "ensure equal treatment of all carriers and avoid any appearance of impropriety or anti-competitive conduct." *Id.*

Plainly, the public interest requires the FCC to assign responsibility for the entire PC change process to a neutral third party administrator. Sprint recognizes, however, that it may take some time to accomplish this goal. Thus, Sprint recommends that pending such assignment, the Commission adopt measures that would minimize ILEC discretion in administering the PC change process and thereby reduce the risk of anti-competitive conduct. Such measures should include, at the very least, those suggested by Sprint LD in its Comments on MCI's rulemaking petition regarding PC freezes as well as the requirement that the ILECs fully implement the Commission's requirement set forth in the *Verification Reconsideration Order*, 8 FCC Rcd at 3218-3219 to provide correct information to end users as to the identity of their IXC.

**III. ANY EFFORT TO CONTROL SLAMMING MUST RECOGNIZE THAT
A CARRIER THAT INTENTIONALLY SEEKS TO CONVERT CUSTOMERS TO
ITS SERVICE WITHOUT AUTHORIZATION IS COMMITTING FRAUD AND
SHOULD BE SUBJECT TO CRIMINAL PROSECUTION.**

Sprint recognizes that many of the Commission's rules proposed here are necessary to implement the Commission's mandate under Section 258. Nevertheless, the fact that the customer's chosen carrier may be able to receive compensation from the

carrier responsible for the slam, as provided for under Section 258, will not eliminate the switching of customers due to deceptive and fraudulent practices being employed by certain carriers. What is needed to deter such deception is criminal prosecution, including, where appropriate, fines and imprisonment.

In the *Further Notice*, the Commission attributes much of the slamming problem to what can only be considered outright fraud. The Commission explains that with today's communications technology and the ability to obtain detailed information about various subscribers from other databases, e.g., the subscriber's social security number, it is a relatively simple matter for unscrupulous carriers to make a large number of unauthorized PC changes from other carriers' networks to their own services. *Id.* at ¶4. Moreover, since it may take some time for consumers to "become aware of the unauthorized PC change," these carriers are able to receive revenue for carrying the traffic of slammed consumers before these consumers are returned to their authorized carriers. *Id.* In this way, unscrupulous operators are sometimes able "to increase their customer bases, revenues and profitability through illegal means." *Id.*

Carriers that illegally "convert large numbers of consumers to their service to reap economic benefits," *id.* at ¶6, presumably do not bother to follow the Commission's rules designed to curtail such conversions. And, there is really no

effective way of preventing such carriers from falsely claiming that they have complied with such rules. They may fraudulently induce consumers to sign an LOA or even forge the consumers' signature on the LOAs.¹⁸ Moreover, as the Commission noted, they may be able to obtain the information necessary to demonstrate alleged compliance with the Commission's third party verification option, e.g., the customer's social security number, not by having an independent third party contact the customer, but by accessing databases where such information may reside. See *Further Notice* at ¶4.

Thus far, the Commission has attempted to control the fraudulent activities of these resellers through the imposition of forfeitures. See, e.g., *LDS Inc. and Excel Telecommunications*, *supra* fn. 18. But as the number of slamming complaints filed with the Commission conclusively demonstrates, any deterrent effect provided by such forfeitures is insufficient.

More recently, the Commission instituted a formal adjudicative hearing to determine, *inter alia*, whether the operating authority of a number of resellers apparently owned by the same individual or individuals should be revoked because of slamming activities. *CCN Order*, *supra* fn. 18. But, regardless

¹⁸See, e.g., *In the Matter of CCN, Inc. et al.* (CC Docket No. 97-144), *Order to Show Cause and Notice of Opportunity for Hearing* (CCN Order), released June 13, 1997 at ¶5; *LDS, Inc., Notice of Apparent Liability for Forfeiture*, DA-96-2101 (released December 17, 1996) and *Excel Telecommunications, Notice of Forfeiture*, DA 96-1009 (released June 21, 1996).

of whether the Commission decides to revoke the operating authority of companies engaged in the illegal conversion of customers to their services and ban their principal(s) from providing telecommunications services in the future without first obtaining Commission consent, there is nothing to deter such principals from starting other reseller operations under different names or through other individuals.

Even the Commission's proposals here which are designed specifically to eliminate the financial incentive to engage in slamming by making the unauthorized carrier liable to the properly authorized carrier for all charges collected from the converted customer are hardly likely to have their intended effect. Under the Commission's proposals, the carrier accused of slamming will only incur this liability if it has submitted or executed a carrier change order in violation of the Commission's verification rules. But, as mentioned above, such failure to comply is difficult to prove. In the absence of a serious investigative effort, an unscrupulous carrier may be able to produce information to demonstrate apparent compliance with the verification rules regardless of whether it actually sought to verify the alleged sale. In any case, the carrier accused of slamming may be able to avoid liability entirely by refusing to pay the amounts collected to the properly authorized carrier. Its refusal would, in turn, require the authorized carrier to file a complaint with the Commission in order to secure foregone